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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re PAIGE L., et al, Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JENNIFER C.,

Defendant and Appellant.

D075821

(San Diego County Super. Ct. No.
EJ4376A, B)

APPEAL from orders of the Superior Court of San Diego County, Gary M. Bubis,
Judge. Conditionally reversed and remanded with directions.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and
Appellant.

Thomas E. Montgomery, County Counsel, Caitlin E. Rae, Chief Deputy County
Counsel, and Tahra Broderson, Senior Deputy County Counsel, for Plaintiff and
Respondent.

Jennifer C. (Mother) appeals from jurisdictional and dispositional orders regarding her minor daughters, Paige L. and P.L. She contends the San Diego County Health and Human Services Agency (Agency) and the juvenile court did not comply with inquiry and notice requirements pursuant to the Indian Child Welfare Act (ICWA), title 25 United States Code section 1901 et seq., and the California Welfare and Institutions Code section 224 et seq.¹ She asks this court to reverse the jurisdictional and dispositional orders and remand for compliance with ICWA.

The Agency submits a letter conceding that a limited remand is appropriate to ensure ICWA compliance. The parties have filed a joint stipulation for immediate reversal of judgment, limited remand to the juvenile court for ICWA compliance, and issuance of an immediate remittitur in the appeal.

We agree a limited remand is necessary. We conditionally reverse and remand for compliance with ICWA, subject to reinstatement if, after proper inquiry and notice, the juvenile court determines the minors are not Indian children.

FACTUAL AND PROCEDURAL BACKGROUND

In March 2019, the Agency filed dependency petitions on behalf of the minors based on the presence of drugs and drug paraphernalia in the home and the parents' drug use. Father was listed as the alleged father, and his whereabouts were unknown.

According to the detention report, the social worker spoke with Courtney G., the fiancé of Father's brother, Tanner H., who indicated she wanted to be a placement option.

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise noted. Father does not appeal.

The juvenile court ordered detention of the minors. They were detained with Courtney and Tanner.

In early April, Mother filed parentage inquiries identifying Father as the biological father, and indicating he was on the birth certificates. She did not answer the questions as to whether he had Native American heritage. Mother also filed ICWA-020 forms (Parental Notification of Indian Status) indicating she had no known Native American ancestry.

The jurisdiction/disposition report stated ICWA "does or may apply." Mother denied Native American heritage, and said "I don't believe so, for [Father] as well." The social worker had attempted to contact Father, but was unable to do so. She did speak with the paternal grandmother, and again with Courtney, but there was no indication she asked about Native American heritage.

At the initial jurisdiction hearing on April 23, the court stated, "With regard to ICWA, the social worker believes it applies, but I'm not sure on which basis." County counsel responded, "I believe the report indicated that[,] because we couldn't rule it out yet because we had not completed search efforts with the father." After the court said "Okay," counsel continued: "Mother has denied. We have no reason to believe the father has Indian ancestry." The court stated "At this time, I'm going to find there is no reason to believe [ICWA] applies."

A May addendum report reflected Father contacted the social worker on April 30. She met with him on May 3, and he reported he was the minors' biological father. The report does not reflect she inquired about Native American heritage, told him he was required to fill out the ICWA-020 form, or requested he do so. Social workers spoke

further with Courtney and Tanner, and there is no indication they asked about Native American heritage.

At the May 7 jurisdiction/disposition hearing, the juvenile court found the petition allegations true, declared the minors dependents, and removed them from Mother's custody. At the end of the hearing, County counsel stated, "I don't believe the Court made an ICWA finding." The court stated, "I thought I did. It says here on April 23rd I found no reason to believe that ICWA applies." Mother timely appealed.

DISCUSSION

We have reviewed the record and agree the Agency and the juvenile court did not comply with ICWA.

The juvenile court and the social worker have an "affirmative and continuing duty" in dependency proceedings to inquire whether a child is, or may be, an Indian child. (§ 224.2, subd. (a); see *In re A.G.* (2012) 204 Cal.App.4th 1390, 1396.) That inquiry includes asking the parents. (§ 224.2, subd. (b); Cal. Rules of Court, rule 5.481(a)(1).)² If a parent is not at the first hearing, or is unavailable at the outset of the proceeding, the court must order the Agency to "use reasonable diligence to find and inform the parent . . . that the court has ordered the parent . . . to complete . . . form ICWA-020[]." (Rule 5.481(a)(3).) Information from extended family members may also provide reason to know the child is an Indian child. (§ 224.2, subd. (d)(1).) A social worker who knows or has reason to know the child is an Indian child is required to make further inquiry and, if applicable, provide notice to Indian tribes of which the child may be a member or citizen. (§ 224.2, subd. (e); § 224.3, subd. (a).)

Here, the social worker did not make a full inquiry regarding the possible Indian status of the minors, and the court erroneously found ICWA inapplicable in the absence of such inquiry. Although Mother had disclaimed Native American heritage, the social

² We recognize Father has alleged father status here, which can limit application of ICWA. (See *In re Daniel M.* (2003) 110 Cal.App.4th 703, 708-709 [alleged father lacked standing to raise ICWA; but see Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2019) § 2.125[1], p. 2-421 [*Daniel M.* does not "automatically exclude" ICWA when the "heritage is through an alleged father, especially if that alleged father acknowledges paternity."].) However, both Mother and Father identified him as the minors' biological father. In light of such identification, and the parties' agreement that ICWA compliance is required, we do not consider his alleged status further.

worker was unable to locate Father by the time of the jurisdiction/disposition report. The report properly recognized ICWA might still apply, and County counsel explained at the April 23 hearing that they had not completed their search efforts for Father. However, County counsel then stated they had no reason to believe Father had Native American heritage, and the juvenile court ruled ICWA did not apply. Once the social worker was able to meet with Father, she still did not ask about Native American heritage or tell him he had to complete an ICWA-020 form. Nor did the social workers ask the paternal relatives about such heritage. Lastly, when County counsel asked about the ICWA ruling at the May hearing (which was after the social worker met with Father), the juvenile court did not revisit it.

Therefore, a conditional reversal and remand is necessary to allow for proper inquiry (and notice, if any) under ICWA. (See *In re Francisco W.* (2006) 139 Cal.App.4th 695, 711.)

DISPOSITION

The jurisdictional and dispositional orders are conditionally reversed. The matter is remanded to the juvenile court with directions to vacate its ICWA finding and to direct the Agency to complete inquiry (and notice, if any), in accordance with ICWA. If, after the Agency does so, the court finds that the minors are Indian children, the court shall proceed in conformity with ICWA. If the court finds that the minors are not Indian children, the orders shall be reinstated. Remittitur shall issue immediately.

HUFFMAN, Acting P. J.

WE CONCUR:

O'ROURKE, J.

GUERRERO, J.